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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE  
- - -  
SOFTVIEW LLC,  
Plaintiff,  
v.  
APPLE INC., and AT&T MOBILITY LLC,  
Defendants.  
- - -  
CIVIL ACTION  
NO. 10-389 (LPS)

Wilmington, Delaware  
Tuesday, February 8, 2011  
*Telephone Conference*

BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J.

APPEARANCES: - - -

BLANK ROME, LLP  
BY: STEVEN L. CAPONI, ESQ.

and

IRELL & MANELLA  
BY: AMIR NAINI, ESQ., and  
SAMUEL K. LU, ESQ.  
(Los Angeles, California)

Counsel for Plaintiff

POTTER, ANDERSON & CORROON, LLP  
BY: DAVID E. MOORE, ESQ.

and

Brian P. Gaffigan  
Registered Merit Reporter

1 APPEARANCES: (Continued)

2  
3 GIBSON DUNN & CRUTCHER, LLC  
4 BY: JOSH A. KREVITT, ESQ.  
5 (New York, New York)

6 and

7 GIBSON DUNN & CRUTCHER, LLC  
8 BY: BRIAN ANKENBRANDT, ESQ.  
9 (Denver, Colorado)

10 Counsel for Defendants

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12 P R O C E E D I N G S

13 (REPORTER'S NOTE: The following telephone  
14 conference was held in chambers, beginning at 2:07 p.m.)

15 THE COURT: Good afternoon, everybody. This is  
16 Judge Stark. Who is there, please?

17 MR. CAPONI: Your Honor, it's Steve Caponi from  
18 Blank Rome for the plaintiff. Along with me is Samuel Lu  
19 and Amir Naini from Irell & Manella.

20 THE COURT: Okay.

21 MR. MOORE: Only behalf of the defendants,  
22 your Honor, David Moore at Potter Anderson. With me on  
23 the line are Josh Krevitt and Brian Ankenbrandt from Gibson  
24 Dunn.

25 THE COURT: Okay. Good afternoon.

1 MR. KREVITT: Good afternoon, your Honor.

2 THE COURT: Good afternoon.

3 Is that the only group of defendants just the  
4 one?

5 (Unidentified Speaker): Yes, your Honor.

6 THE COURT: So I have a court reporter with me;  
7 and for the record, it's our case of SoftView LLC v Apple  
8 Inc. et al, Civil Action No. 10-389-LPS, and this is the  
9 time for our scheduling conference.

10 It seems the parties did not agree about just  
11 about anything in the proposed scheduling order so I want to  
12 give each side a chance to help me focus on the numerous  
13 disputes and give me a sense as to why I should go with the  
14 way you see it.

15 So let me first hear from the plaintiffs.

16 MR. NAINI: Your Honor, this is Amir Naini, from  
17 Irell & Manella for the plaintiffs.

18 I think one of the main issues in the two  
19 proposals has to do with whether, and when, SoftView, the  
20 plaintiff, should limit its asserted claims; and, if so,  
21 what that number of claims should be at this stage of the  
22 case where we are just getting into discovery and we haven't  
23 received invalidity contention responses at all for one of  
24 the patents in suit and we haven't received what we think  
25 our final responses for the patent in suit.

1           We're at a stage where we need to see how the  
2           case proceeds to determine when we can limit the asserted  
3           claims. We fully intend to obviously for trial and we fully  
4           intend to before trial to streamline the case. But at this  
5           stage, to set a deadline we think is not necessary or even  
6           feasible because we need to see how the case unfolds before  
7           we can set a sensible deadline for the limitation of  
8           asserted claims.

9           One of the things that we will need, we think  
10          we're entitled to, are final responses to invalidity  
11          contention interrogatories for the plaintiffs so we can  
12          limit our asserted claims in light of final responses that  
13          we can rely on.

14          This issue in our mind is linked to the issue  
15          whether we can set deadlines as SoftView proposes for final  
16          responses both to infringement contention interrogatories  
17          and then after a reasonable amount of time, three weeks I  
18          believe in our proposal, to invalidity contention  
19          interrogatories.

20          THE COURT: So you want a deadline for them on  
21          the interrogatories responses but no deadline for you on  
22          limiting the asserted claims?

23          MR. NAINI: Well, to be clear, we would set  
24          deadlines both for ourselves for infringement contentions  
25          and for them for invalidity contentions, but then we don't

1     feel at this time it's feasible to set a deadline for  
2     until we see how the case proceeds, we see if we can get  
3     final responses to invalidity contention interrogatories  
4     so SoftView can be in a position to limit its asserted  
5     claims.

6             THE COURT: Okay. Are there any other sort of  
7     broad issues or even specific issues that you want issues  
8     that you want me to focus on?

9             MR. NAINI: Well, the other major issue at play  
10    runs through all the proposed dates and that is the issue of  
11    when trial should be set.

12            We have suggested a trial start date that is a  
13    little over two years after the filing of the complaint in  
14    this action, in late July of 2012, and the defendants have  
15    proposed a date in December of that year. So we based our  
16    proposal based on what this Court has been doing from what  
17    we can tell in other cases, and it is about 26 months or so,  
18    27 months after the filing of the complaint.

19            THE COURT: Okay. Let's hear from defendants  
20    then.

21            MR. KREVITT: Your Honor, this is Josh Krevitt  
22    from Gibson Dunn. And I'm happy to address the issues,  
23    obviously, in any way and in any order that your Honor would  
24    like.

25            Let me start this way unless your Honor has a

1 different preference. I understand the comment at the  
2 outset that it appears the parties have not agreed too much,  
3 and that certainly, given our submission, a reasonable  
4 comment.

5 Most of the dispute turns I think on the dates  
6 and a difference of opinion as to when the trial date should  
7 be. My strong sense is that with the Court's guidance on  
8 what an appropriate trial date is, the parties would be able  
9 to roll up their sleeves and make either a joint suggestion  
10 or something very close to a joint suggestion on all the  
11 dates between now and then.

12 As to the trial date, the defendants proposed  
13 December 10, 2012, which is about 22 months from now. Of  
14 course, that was not an arbitrary selection. I will tell  
15 you, your Honor, that we looked at other scheduling orders  
16 that your Honor has put in place, including in certain  
17 instances cases in which we are involved, and this is less  
18 time than all of the other ones, at least all the other ones  
19 we could find, so I don't represent to your Honor that we  
20 were able to do an exhaustive search but we looked at half a  
21 dozen or so, and time from complaint to trial is less here  
22 and time from scheduling conference to trial is less in  
23 defendants' proposal.

24 So we considered actually proposing a longer  
25 schedule, we think that might be warranted, but tried to

1 propose instead as aggressive and, in our view, reasonable  
2 schedule as possible and that puts it, as I said, at  
3 December 10, 2012.

4 I'd be happy to explain why we think that is  
5 appropriate beyond just the fact that it is shorter than  
6 all the other scheduling orders that we could find that your  
7 Honor has put in place.

8 Just one recent one I wanted to mention, your  
9 Honor, because I was involved in a schedule in the Fair  
10 Isaacs v Actimize case and your Honor put in place, from  
11 the scheduling conference, a trial that was over two years.  
12 Our proposal, of course, is under two years by a few months  
13 and that was some three years or so from the filing of the  
14 complaint in that other case; and our proposal here is  
15 meaningfully less than that, about two years from the filing  
16 of the original complaint.

17 I should also note there has been an amended  
18 complaint filed which added a patent relatively recently.  
19 It was filed in December of last year, so just a couple  
20 months ago.

21 So the schedule, in our view, is actually  
22 aggressive given all that needs to happen in this case, the  
23 allegations in this case, and what your Honor is doing in  
24 other cases.

25 As to a couple other issues that were raised

1 that I want to address. One is to limit claims, your Honor.

2 As Your Honor knows, courts routinely order  
3 plaintiffs to limit the number of claims in cases. This  
4 court has done it repeatedly. Courts increasingly are  
5 putting it into the scheduling order, and it just makes good  
6 sense. Every plaintiff, every single plaintiff in every  
7 case I have been involved in says exactly what your Honor  
8 just heard from the plaintiff in this case: We will do it,  
9 we'll do it at the right time, we'll do it before trial, but  
10 with no commitment as to when to do it.

11 Limiting the claims, your Honor, is particularly  
12 necessary and appropriate in this case. There are two  
13 patents in suit in this case, your Honor, and the plaintiff  
14 has asserted 350 claims, nearly every single claim in the  
15 two patents. Some 90 percent, to be more precise, of the  
16 claims in the two patents. 350 claims.

17 There is, in our view, your Honor, just simply  
18 no justification. In case after case, courts have looked  
19 at 30 claims, 40 claims and said that it is way too many  
20 and require the plaintiff to limit the number of claims.

21 Your Honor did that recently, as you know, in  
22 the Personalized User Model case, limiting just from 36  
23 claims to 15, cut the number of claims in half from 36.

24 There are 10 times the number of claims, almost  
25 every single claim being asserted in this case. And what



1 we did, your Honor, is we proposed what we believe to be a  
2 reasonable mechanism.

3 Again, your Honor, we contemplated proposing a  
4 more aggressive schedule and limitation but went ultimately  
5 with something that we thought was very reasonable, and that  
6 would be that at the outset of the case, the plaintiff would  
7 be required to limit the number of claims. We proposed 15,  
8 and we had a date in the proposed scheduling order of  
9 March 11th for that. Obviously, it wouldn't be exactly that  
10 date but we think it should be right at the outset of the  
11 case.

12 And we then have a second date which would be  
13 after the close of fact discovery but before expert reports  
14 in which the plaintiff would be required to do a further  
15 limiting. We proposed March of next year and the plaintiff  
16 would be required to limit the claims to eight.

17 In case after case, those limitations have  
18 been put in place not only as part of scheduling orders,  
19 your Honor, but before Markman, before the close of fact  
20 discovery, before final contentions, and so we would propose  
21 that it makes sense to do so here, particularly given the  
22 350 claims the plaintiff is now asserting.

23 Finally, your Honor, the other issue that was  
24 raised, and then, of course, I'd be happy to address any  
25 questions you have, is with respect to contentions.

1 Just to be clear, the parties both agree that  
2 contention interrogatories are appropriate. They should be  
3 served and responded to early. Your Honor has that in the  
4 form scheduling order. The parties included that without  
5 modification in the order that the parties submitted to the  
6 Court.

7 There is no question that contention  
8 interrogatories are appropriate. They have already been  
9 served. They already have been responded. Neither side  
10 is yet pleased with the other side's responses, but they're  
11 out there, and the parties are free to seek the Court's  
12 intervention, of course, in the event through meet and  
13 confer either party is not satisfied with the responses.

14 What we object to is the introduction which I  
15 would note, for what it's worth, this Court has never done  
16 of a specific date in the scheduling order very soon for  
17 final contentions, infringement, and then invalidity  
18 contentions.

19 We would suggest instead that the Court's order  
20 is sufficient to address contention interrogatories given  
21 that the parties have both served and responded to them and  
22 that we proceed with the type of scheduling order this Court  
23 has put in place each and every time which thus encourages  
24 early contention interrogatories and provides access to the  
25 Court in the event that either party is not satisfied with

1 the other party's response.

2 So those are the big ticket issues, your Honor.  
3 Some of the other issues addressed as disputes are hours for  
4 depositions and number of interrogatories and things like  
5 that, but the big ticket ones are the ones that I have just  
6 addressed.

7 THE COURT: All right. Thank you, Mr. Krevitt.  
8 Let me ask you a question.

9 One thing that we might hear from Mr. Naini  
10 in response, which I often hear, is plaintiffs don't want  
11 to narrow the asserted claims until after they get the  
12 claim construction order, which on either of your schedules  
13 is some time down the road. What is your response to  
14 that?

15 MR. KREVITT: I guess I have a few responses  
16 very quickly, your Honor.

17 First, virtually every case to address this  
18 issue has required the limitation of claims before Markman,  
19 so it would be anomalous to do it after Markman. The only  
20 time it is done after Markman was where it didn't raise it  
21 or the Court, on its own, didn't raise it until after  
22 Markman. But every time any court in any jurisdiction has  
23 been asked to do this, it's done prior to Markman.

24 And for good reason, which is the second point  
25 I would make, which is particularly with 350 claims, the

1 Markman process is at risk of becoming completely  
2 impractical.

3 Now, of course, your Honor can say I'm only  
4 going to construe 12 terms, so your Honor can put whatever  
5 constraints on the Markman process the Court wishes. But  
6 as your Honor also knows, it is necessary for the Court to  
7 construe any claim terms for which there is a dispute  
8 regarding the appropriate construction. And so as part  
9 of that process, as part of an orderly process for the  
10 development of the claims of the defenses in this case and  
11 leading into claim construction, it is critical that the  
12 plaintiffs be required well in advance of the Markman  
13 process to select the claims that they're going to proceed  
14 with in this case, at least an initial cut, at least the  
15 first cut. Whether it's down to the few claims at trial is  
16 a different matter, but they certainly should be required to  
17 reduce it to a dozen or so claims to allow the parties to  
18 proceed to Markman. And,

19 Finally, your Honor, this is, of course, the  
20 plaintiff's case. The plaintiff has presumably a Rule 11  
21 basis to bring this case. As Your Honor knows, involved in  
22 that process is not only an analysis of the defendants'  
23 products but a claim construction. So the defendants, one  
24 can presume, have already developed what they believe are  
25 the appropriate claim construction positions for these

1 patents.

2           Given all that information that the plaintiff  
3 has, and the need for this case to proceed in a reasonable  
4 way, particularly given the hundreds and hundreds of  
5 asserted claims now, we believe it's critical that the  
6 claims be limited well, well in advance of Markman to allow  
7 discovery to proceed in a reasonable, fair way. Otherwise,  
8 it is, I respectfully submit, your Honor, just harassing for  
9 the plaintiff to be able to assert hundreds of claims when  
10 we all know on this call that the plaintiff won't go to  
11 trial or even proceed to expert reports with anything but a  
12 tiny, tiny fraction of that number of claims.

13           MR. NAINI: Your Honor.

14           THE COURT: Hold on.

15           So, Mr. Krevitt, if I understand the plaintiff's  
16 position, I think they largely agree with you; and as you  
17 say, we all know this case is going to get cut down in time.  
18 What would be unusual in my experience is giving them a  
19 specific number and a specific deadline at this early point  
20 in the case.

21           I understand you are representing that other  
22 courts are doing that, but just focus me for a minute on why  
23 I should, sitting here at the very beginning of the case,  
24 having just heard today a little bit about the case and  
25 really knowing almost nothing about the substance of it, why

1 I should be confident that I could impose such deadlines at  
2 this early point.

3 MR. KREVITT: Well, your Honor, that is entirely  
4 fair. And, of course, we included it in the scheduling  
5 order because we think it's appropriate. But we also would  
6 be more than willing, and it may be useful to the Court, to  
7 submit a short brief on the subject in which we identify  
8 those cases and provide in more detail the reasoning behind  
9 the cases.

10 But your Honor did this relatively recently in  
11 September of last year in the Personalized User Model v  
12 Google case in which before the Markman hearing, before the  
13 close of fact discovery, your Honor reduced the number of  
14 asserted claims by order to 15 from 36, as I said earlier.

15 Judge Farnan did it many times, including in  
16 the Power Integrations case, before the Markman hearing. He  
17 reduced the number of claims from 18 to 7. So he considered  
18 18 claims too many and reduced the number to less than --  
19 or to fewer, excuse me, than half of that, to seven.

20 In the LG Display v AU Optronics case, in  
21 February of last year, Judge Farnan also limited the number  
22 of claims. There had been nine patents asserted. This is  
23 all before Markman. Nine patents asserted, and the Court  
24 required the plaintiff to reduce the number of patents to  
25 four, required the plaintiff to cut the number of patents

1 by more than half, and the number of claims to only seven  
2 across the four patents. So substantially all before  
3 Markman, your Honor, all for the same reason.

4 Reasonable people could disagree as to whether  
5 the right date is next week or next month or two months  
6 from now, but in our view, your Honor, with 350 claims  
7 asserted, virtually every single claim of the two patents,  
8 an appropriate limitation both in terms of number of claims  
9 asserted and the timing for that is necessary in order for  
10 this case to proceed in a fair and reasonable way.

11 As I said, your Honor, I know you are hearing it  
12 for the first time on this call. If it would be helpful, we  
13 would be very happy to submit a brief to your Honor.

14 THE COURT: Okay. Thank you. Let me hear a  
15 response from the plaintiff, please.

16 MR. NAINI: This is Amir Naini, your Honor.

17 On the issue of how many claims there are at  
18 issue, at this point in the case, there are 350 claims,  
19 approximately, that have been asserted across the two  
20 patents. That is because we have infringement reads which  
21 we provided and detailed claim charts to the defendants on  
22 those claims.

23 Now, those claims are not 350 unrelated claims.  
24 They share claim language. They can be dealt with at  
25 Markman we believe very efficiently because of that sharing

1 of claim language, but they are slightly different from one  
2 another, sometimes more different than in others. But the  
3 point is we took a look at each claim that we had an  
4 infringement read on and we provided the claim charts and  
5 it ended up being 350 claims. The task at Markman and the  
6 task for expert reports will not be 350 times more work for  
7 350 claims than it is for one claim in this case.

8 We understand that you don't have the claims in  
9 front of you. We haven't gotten to a point in the case  
10 where you can see the similarities of the claim terms, but  
11 we believe they are highly similar, and it's apparent from  
12 just looking at the language of the claims and comparing one  
13 claim to another.

14 The other thing that I wanted to get into a  
15 bit more detail on is our concern about the responses to  
16 invalidity contention interrogatories, because we don't want  
17 to get to a point in the case where we have limited our  
18 asserted claims to a very small number and then defendants  
19 come forward with prior art that they were aware of, that  
20 they are aware of now but they haven't disclosed to us yet,  
21 only after we've limited our asserted claims.

22 We would be happy to consider a procedure  
23 whereby we adopt a good cause standard, as is used in  
24 some other districts under their local patent rules, where  
25 responses to invalidity contention interogs can't be



1 expanded or supplemented without good cause so that we know  
2 that we will get everything that the defendants are aware  
3 of at the present time.

4 The reason we're a little suspicious, quite  
5 frankly, is that the defendants haven't identified any prior  
6 art in their responses that hasn't already been cited to the  
7 PTO or was not already cited to the PTO during the prosecution  
8 of the patents.

9 If that is all they have, then that is fine.  
10 But, see, this illustrates one of the problems that we're  
11 dealing with as the plaintiff in this case, dealing with the  
12 request to limit our asserted claims, even though the claims  
13 share some claim language, and it won't be overly burdensome  
14 to proceed with the claims that we've asserted so far and go  
15 forward with the case.

16 We're dealing with not getting responses from  
17 the defendants and being put in a position where they  
18 essentially want to go first on things where, in all  
19 fairness, they should give us full information on first.

20 THE COURT: Okay. Thank you, counsel.

21 Let me tell you where we are, and this is just  
22 at a clearly an interim point. I'm not going to give you,  
23 really other than one, much in the way of specific dates.  
24 And I'm going to send you off with some of my thoughts  
25 and have you meet and confer further and get a revised

1 submission to me by a week from today, which I'm confident  
2 will have significantly narrowed the disputes, if not  
3 resolved them. But let me give you some thoughts on the two  
4 broad issues that we discussed here.

5 The first one really, in my mind, is really a  
6 focus on whether the scheduling order should itself set  
7 interim dates for the reduction in the number of asserted  
8 claims, and, somewhat relatedly, whether there should be  
9 specific dates for responses to interrogatories.

10 My practice to this point, and while clearly  
11 reasonable minds could differ and I'm always interested in  
12 hearing how others are handling the same issues, my practice  
13 is going to be applied in this case, which is I'm not, from  
14 the start of the case in a scheduling order, going to impose  
15 a specific deadline or a specific number of claims that  
16 the plaintiff can assert at each stage of the case. And,  
17 likewise, I'm not going to set a deadline for when final  
18 infringement and invalidity contention interrogatories need  
19 to be responded to. I think the case needs to play out at  
20 least a little bit more before I will be in a position to  
21 make that kind of case specific determination here.

22 In the past, when I have limited the number of  
23 asserted claims, I believe I have done that in the context  
24 of a dispute that has come up through the discovery disputes  
25 procedures that we use and that are set out, of course, in

1     our form order and will be in your final scheduling order.  
2     And that is the mechanism that I think works best for me in  
3     resolving this type of issue.

4             But let me be clear; and I don't think there is  
5     really any dispute on this. Obviously, 350 claims is way  
6     too many. It's at least an order of magnitude too many, and  
7     that pretty soon the plaintiff is going to have to reduce  
8     the number of asserted claims; certainly, will have to take  
9     a significant reduction some time before Markman; and I'm  
10    sure additional reductions in the number of claims will  
11    occur after that point. But I can't, sitting here, give you  
12    a specific date and a specific number.

13            Also, I'm quite willing and will, if necessary,  
14    reduce the number of claim terms that will be construed at  
15    the Markman hearing, but that, too, is not something I want  
16    to do in a vacuum up front.

17            As the parties are exchanging their contentions  
18    on the disputed claim terms that they think need to be  
19    construed at the Markman hearing, if one side thinks the  
20    other side is being unreasonable in the number, that is a  
21    dispute that you can, and should, bring to the Court's  
22    attention through the discovery matters procedure. And I  
23    will impose a limit that I find to be reasonable based on  
24    what I know at that point about this case.

25            So in your proposal for next week, if you all

1 can agree on specific limits, that is fine. I'll sign your  
2 order if you are agreed on specific limits; but if you are  
3 not agreed, then those are matters that just will be dealt  
4 with in time through our discovery matters procedure, if you  
5 remain in dispute about them going forward.

6 I'm not going to set any dates in this case  
7 beyond the filing of case dispositive motions, so while I  
8 appreciate the parties have worked to try to come up with  
9 a target trial date, and we may well meet one or the other  
10 of the trial date targets that the parties have proposed, at  
11 this point, particularly given all the other many, many  
12 cases that I am in the middle of scheduling, I'm only going  
13 to schedule you through case dispositive motions.

14 And the only other thing I am going to say is I  
15 am going to give you a Markman hearing date, and we will do  
16 your Markman hearing on September 23rd, the date that the  
17 plaintiff proposed, and we can do it at 1:00 p.m. We can't  
18 do it at 9:30 that morning.

19 So with that, my hope is that the parties can  
20 agree on at least all of the dates up to that. Hopefully,  
21 they can agree on the case dispositive motion date as well.  
22 And as I say, the dates for pretrial conference and trial  
23 will be set at a later point in this case.

24 Are there any questions about any of that,  
25 Mr. Naini?

1                   MR. NAINI: No, your Honor. Thank you. That  
2 is very helpful in terms of coming to an agreement with  
3 defendants. I'm optimistic we will be able to do so.

4                   THE COURT: Mr. Krevitt, any questions?

5                   MR. KREVITT: No, your Honor. Thank you very  
6 much for your time and helpful guidance.

7                   THE COURT: Okay. We'll look for your  
8 submission next week. Thank you all very much.

9                   MR. KREVITT: Thanks.

10                  (Telephone conference ends at 2:36 p.m.)

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